



DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AB58

Changes to the Labor Certification Process for the Temporary Non-Agricultural Employment of H-2B Aliens in the United States; Revisions to Transition Period

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Guidance.

SUMMARY: On February 21, 2012, the Department of Labor (the Department or DOL) published a Final Rule amending H-2B regulations governing the certification of temporary employment of nonimmigrant workers in temporary or seasonal non-agricultural employment. On March 20, 2012, the Department published guidance informing employers of the dates by which their H-2B application must be postmarked in order to be governed by the Final Rule. This guidance revises these dates so that the Final Rule will become operative 60 days after it was reported to Congress.

DATES: This guidance is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210; Telephone: (202) 693-3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 21, 2012, the Department published a Final Rule amending the H-2B regulations at 20 CFR part 655, Subpart A.

77 FR 10038, Feb. 21, 2012. The Final Rule provides for an effective date of April 23, 2012, which is 60 days after the date of publication of the Final Rule. On March 20, 2012, 77 FR 16157, the Department published guidance which provided that applications filed under Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers), and Other Technical Changes, 73 FR 78020, Dec. 19, 2008 (the current regulation), must be sent to the Office of Foreign Labor Certification's (OFLC's) Chicago National Processing Center (CNPC) and postmarked no later than midnight April 22, 2012, the last day before the effective date of the H-2B Final Rule. The guidance also provides that applications postmarked on or after April 23, 2012 will be adjudicated in accordance with the requirements described in the Final Rule.

The Department is revising its guidance to clarify that the Final Rule will not be operative until April 27, 2012. In accordance with the Congressional Review Act, (CRA), 5 U.S.C. 801, et seq., April 27, 2012 is 60 days after February 27, 2012, the date on which the rule was reported to Congress, and the earliest date on which the rule can become operative under the CRA. See 5 U.S.C. 801(a)(3). While section 801(a)(3) does not alter the date a rule goes into effect, it prevents an agency from enforcing the rule for 60 days after the rule is reported to Congress.

Accordingly, applications filed under the current regulation must be sent to the CNPC and postmarked no later than midnight April 26, 2012, and applications postmarked on or after April 27, 2012 will be adjudicated in accordance with the requirements described in the Final Rule. Any application filed under the current regulation that is postmarked on or after April 27, 2012 will be returned, and the employer (and its agent or attorney)

informed of the need to file a new application in accordance with the provisions of the new H-2B Final Rule.

Please note that, as provided in the March 20th guidance, employers who file H-2B applications with a start date of need before October 1, 2013 will not be required to obtain the pre-approved H-2B registration under 20 CFR 655.15, and the Department will continue to adjudicate temporary need during the processing of applications by reviewing the employer's statement of temporary need in Section B of the ETA Form 9142.

Employers with H-2B applications postmarked on or after April 27, 2012 with a start date of need on or after October 1, 2013, must comply with all the requirements contained in the registration process unless the OFLC publishes additional guidance in the Federal Register.

Employers with questions are encouraged to submit their questions to H-2B.Regulation@dol.gov. The Department will provide responses in the form of Frequently Asked Questions (FAQs) on its Web site.

Signed in Washington, this 17th day of April, 2012.

Jane Oates

Assistant Secretary, Employment and Training Administration

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